

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Helen Wong-Armijo	)	WT Docket No. 16-385
FCR, Inc.	)	
Skybridge Spectrum Foundation	)	
Telesaurus Holdings GB LLC	)	
	)	
Applications for Extension and/or Waiver of	)	
Construction Deadlines	)	

To: Chief, Wireless Telecommunications Bureau

**OPPOSITION OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) opposes the Applications for Extension and/or Waiver (collectively, the “Applications”) filed by Multilateration Location and Monitoring (“M-LMS”) applicants Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC, (collectively, the “Applicants”), as identified in the Bureau’s November 10, 2016 Public Notice.<sup>1</sup> WISPA urges the Bureau to reject the Applications and to deem the underlying M-LMS licenses expired due to the Applicants’ failure to comply with their construction obligations.

***Background***

WISPA represents the interests of wireless Internet service providers (“WISPs”) that provide fixed wireless broadband Internet access services to millions of residences, businesses, hospitals and public safety access points nationwide. WISPs offer competitive terrestrial

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<sup>1</sup>Wireless Telecommunications Bureau Seeks Comment on Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC, Requests for Multilateration Location and Monitoring Service Waiver and Construction Extensions, *Public Notice*, WT Docket No. 16-385 (rel. Nov. 10, 2016) (“Public Notice”). The Public Notice references the relevant application file numbers and call signs.

broadband access solutions in many areas, including rural locations where broadband is costly to deploy. Many WISPs have deployed Part 15 license-exempt equipment using the 902-928 MHz band, particularly for delivery of service to customers in hilly, wooded or obstructed areas.

WISPA has an acute interest in the Bureau's consideration of the Applications. The Commission "seeks to ensure . . . that *LMS systems are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 devices will be negatively affected.*"<sup>2</sup> M-LMS operations bring significant risk of interference to WISP operations in the 900 MHz band by serving Economic Areas using frequencies that are co-channel to some of the same 900 MHz frequencies that WISPs and others use.<sup>3</sup> For this reason, WISPA and its members are directly affected by M-LMS licensees' compliance with their construction and performance obligations.

Once again, the Applicants seek extensions of time to construct their facilities. Helen Wong-Armijo ("HWA") requests extensions of midterm and final construction deadlines for 84 Channel Block B and C M-LMS licenses until October 5, 2021.<sup>4</sup> In the alternative, HWA seeks a waiver of license buildout requirements. FCR, Inc. ("FCR") seeks a waiver of midterm and final construction deadlines for 13 Channel Block A M-LMS licenses.<sup>5</sup> In the alternative, FCR seeks extension of its construction deadlines. Finally, Skybridge Spectrum Foundation ("Skybridge") and Telesaurus Holdings GB, LLC ("Telesaurus"), though a court-appointed receiver ("Receiver"), filed applications for extension of construction deadlines for Skybridge's 128

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<sup>2</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicular Monitoring Systems, *Order on Reconsideration*, 11 FCC Rcd 16905, 16912 (1996) (emphasis added).

<sup>3</sup> M-LMS Block A is 904-909.75 MHz and 927.75-928 MHz; Block B is 919.75-921.75 MHz and 927.5-927.75 MHz; Block C is 921.75-927.25 MHz and 927.25-927.5 MHz.

<sup>4</sup> Helen Wong-Armijo, Request for Extension of First Build-Out Date and Request for Waiver, filed August 29, 2016, and Request for Extension of Second Build-Out Date and Request for Waiver, filed September 12, 2016.

<sup>5</sup> FCR, Inc., Request for Waiver and For Extension of First Build-Out Deadline, filed August 31, 2016, and FCR, Inc., Request for Waiver and For Extension of Second Build-Out Deadline, filed September 12, 2016.

Channel Block A M-LMS licenses and one Telesaurus Channel Block C M-LMS license.<sup>6</sup> In the alternative, the Receiver seeks an extended timeframe for construction to comport with the relief requested by PCS Partners, L.P. in its April 15, 2016 request for waiver and extension – a request that WISPA also opposed.<sup>7</sup>

All told, Applicants seek waivers or extensions for 226 M-LMS licenses, all of which have a midterm construction deadline of September 4, 2016 and a final construction deadline of September 4, 2018. The requests are made despite the numerous extensions that the Bureau has afforded the Applicants to date. The FCC auctioned M-LMS licenses in Auction 21 (closing March 1999) and Auction 39 (closing June 2001).<sup>8</sup> In 2004, the Bureau granted Warren C. Havens, then holder of controlling interests in Telesaurus and Skybridge, three additional years to meet the five-year construction requirement.<sup>9</sup> In 2005, the Bureau granted FCR similar relief.<sup>10</sup> In 2008, after considering requests from Progeny LMS, LLC and PCS Partners, L.P. for extensions for their licenses, the Bureau extended the five-year construction requirement for all M-LMS licensees.<sup>11</sup> In 2014, the Bureau granted additional relief, extending the FCR, Wong-Armijo, Skybridge and Telesaurus (call sign WQGN602) mid-term construction deadline to

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<sup>6</sup> Skybridge Spectrum Foundation, Telesaurus Holdings FB LLC, Request for Extension of Time to Construct, filed September 2, 2016. (“Skybridge/Telesaurus Request”)

<sup>7</sup> Opposition of the Wireless Internet Service Providers Association, WT Docket No. 16-149, filed May 24, 2016.

<sup>8</sup> Location and Monitoring Service Auction Closes, Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service, *Public Notice*, 14 FCC Rcd 3754 (1999); Public Coast and Location and Monitoring Service Spectrum Auction Closes, Winning Bidders Announced, *Public Notice*, 16 FCC Rcd 12509 (2001).

<sup>9</sup> Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for his Multilateration Location and Monitoring Service Economic Area Licenses, *Memorandum Opinion and Order*, 19 FCC Rcd 23742 (2004).

<sup>10</sup> Request for Extension of Five-Year Construction Requirement, *Letter*, 20 FCC Rcd 4293 (2005) (*FCR Order*)

<sup>11</sup> The Bureau extending the five-year construction requirement to July 19, 2012 for licensees required to meet the mid-term requirement on or before July 19, 2012 and extended the end-of-term requirement to July 19, 2014 for any licensee that was required to meet the end-of-term requirement on or before July 19, 2014. Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules, *Order*, 23 FCC Rcd 17250 (WTB 2008).

September 4, 2016 and the end-of-term construction deadline until September 4, 2018.<sup>12</sup> In light of the repeated extensions granted to date and the lack of progress in deploying M-LMS facilities, WISPA urges the FCC to reject the Applicants' requests.

### **Argument**

#### **PETITIONERS FAIL TO SATISFY THE LEGAL STANDARDS FOR, OR TO OTHERWISE JUSTIFY, EXTENSION OR WAIVER**

The Applicants are bound by the Commission's M-LMS performance and construction requirements, which require construction and operation of a sufficient number of base stations to serve one-third and two-third of an Economic Area's population within five and ten years of the initial license grant, respectively. Alternatively, M-LMS licensees may demonstrate substantial service at the five- and ten-year benchmarks.<sup>13</sup> Failure to meet the construction requirements results in automatic termination as of the construction deadline.<sup>14</sup>

In limited circumstances, M-LMS licensees may request an extension of these performance and construction deadlines. The Bureau "may" grant such requests under Section 1.946(e) of the Commission's rules "if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control."<sup>15</sup> The Communications Act of 1934, as amended (the "Act"), limits the Bureau's discretion because it requires that regulations prescribed for competitive bidding, such as the regulations for M-LMS services, "shall ... include performance requirements, such as appropriate deadlines and

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<sup>12</sup> Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P. and Helen Wong-Armijo for Waiver and Limited Extension of Time; Requests by Skybridge, *Order*, 29 FCC Rcd 10361, 10367 (WTB 2014) ("2014 M-LMS Order").

<sup>13</sup> 47 C.F.R. §90.155(d).

<sup>14</sup> 47 C.F.R. §1.946(c).

<sup>15</sup> 47 C.F.R. §1.946(e). *See also* 47 C.F.R. §90.155(g) ("Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment.")

penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services.”<sup>16</sup> Accordingly, the Bureau must account for the Act’s requirement to ensure prompt delivery of service and to promote investment and rapid deployment.

In the alternative, rather than requesting an extension of time to construct, a licensee may request a waiver of the construction requirement. By rule, the Bureau may wave a Commission rule when: “(i) the underlying purpose of the rules(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>17</sup> Proponents must plead with particularity the facts and circumstances that warrant such action.<sup>18</sup> Under *WAIT Radio*, a waiver proponent “faces a high hurdle even at the starting gate” to obtain the relief it requests.<sup>19</sup>

WISPA urges the Bureau to deny the Applications for failure to make the required legal showing to warrant an extension or waiver. Instead, the Applicants again seek forgiveness for voluntary business decisions that resulted in a noted lack of investment or rapid deployment, thus thwarting the Act’s imperatives. As described below, Applicants have failed to meet their obligations, so the FCC should deem the licenses to be terminated.

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<sup>16</sup> 47 U.S.C. §309(j)(4)(B).

<sup>17</sup> 47 C.F.R. §1.925(a)(3).

<sup>18</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>19</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (“*WAIT Radio*”).

The FCC gave potential applicants in Auctions 21 and 39 clear notice that they would be expected to satisfy M-LMS construction requirements, regardless of their business decisions:

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.<sup>20</sup>

In the 2014 M-LMS Order, the Bureau granted relief for these M-LMS licensees even after having “previously granted M-LMS licensees multiple extensions of time (at least seven additional years for the majority of M-LMS licenses)...”<sup>21</sup> The Bureau cited the FCC’s termination of the M-LMS Notice of Proposed Rulemaking as removing “regulatory uncertainty” for licensees regarding potential M-LMS rule changes.<sup>22</sup> The Bureau stated however, that “we do not rely on the current state of equipment development as justification for further limited relief to M-LMS licensees.” The Bureau also noted that prior grants were based “in part on the fact that the mid-term construction deadline was well in advance of the first renewal deadline for the licenses. At this point, however, licensees are beyond their renewal deadlines and the regulatory landscape for this service is no longer uncertain. Even if the equipment market does not develop consistent with M-LMS licensees’ chosen business plans, licensees will nonetheless be subject to the construction requirements in the two and four year timeframes granted today...”<sup>23</sup> Against this backdrop, WISPA addresses the Applicants’ claims.

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<sup>20</sup> VHF Public Coast and Location and Monitoring Service Spectrum Auction Scheduled for June 6, 2001, *Public Notice*, DA 01-746 (rel. Mar. 26, 2001) at 5; Auction of Location and Monitoring Service Licenses, *Public Notice*, DA 98-1879 (rel. Sept. 23, 1998) at 7.

<sup>21</sup> 2014 M-LMS Order at 10367.

<sup>22</sup> On June 10, 2014, the FCC terminated a proceeding that proposed revisions of M-LMS rules, noting that the existing framework would provide M-LMS licensees with sufficient opportunities to provide service offerings. Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, *Order*, 29 FCC Rcd 6361, 6362 at para. 8.

<sup>23</sup> 2014 Order at 10368.

### *Skybridge and Telesaurus*

Susan B. Uecker, the court-appointed Receiver for Skybridge and Telesaurus seeks an extension for 129 M-LMS licenses. She states that she “was unable to devote her time and energy wholly” to pursuing “strategic transactions” to put the licenses into service. Instead, she cites “unresolved issues related to the licenses and the receivership” such as detangling the history of the licenses, and what she characterizes as “unfair delays” associated with legal disputes with Warren Havens, who previously held interest in the licenses. She acknowledges that Havens failed to demonstrate “that any construction efforts undertaken prior to the receivership clearly satisfy the FCC’s requirements under Part 90.”<sup>24</sup>

Section 1.946(e)(3) states that extension requests “will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization.”<sup>25</sup> Moreover, the FCC “will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.”<sup>26</sup> Nevertheless, the Receiver invokes those bases here. The Receiver indicates that Skybridge and Telesaurus were placed under Receiver’s control on November 16, 2015. Thus, a transfer of control occurred, and the Receiver is the transferee. In a similar situation, in October 2016, the Bureau denied Skybridge’s request to extend the five-year construction deadline for 2,132 Part 22 Economic Area paging licenses. There, as here, Ms. Uecker acted as Receiver for Skybridge, and the Bureau rejected her claim that a change in control of certain paging licenses after expiration of their five-year construction deadline

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<sup>24</sup> Skybridge/Telesaurus Request at pp. 1, 5-6.

<sup>25</sup> 47 C.F.R. §19.46(e)(3).

<sup>26</sup> *Id.*

constituted a basis for extending coverage deadlines for those licenses.<sup>27</sup> The Receiver's assumption of control, therefore, is no valid basis for an extension of the construction period.

Nevertheless, the Receiver says that the Superior Court provided the Receiver authority to sell or lease LMS licenses in February 2016 but due to an intervening Bankruptcy petition filed by Havens, "during the first eight months of the Receivership, the Receiver had about two weeks during which she had transaction authority for the Skybridge licenses without the specter of bankruptcy hanging over any actions."<sup>28</sup> She presses her case here that Havens' post-receiver activities unfairly harmed her ability to enter into "strategic transactions" with respect to the licenses. This claim must fail. To the extent such "strategic transactions" would consist of assigning the licenses to a third party, Section 1.946(e)(3) makes clear that such assignments are invalid grounds for requesting a construction extension, and it bars an extension of time to construct on the basis based on transfer of control of the licenses.

Nevertheless, the Receiver cites a case for the proposition that a waiver of a deadline is permissible where a "former controlling entity improperly interferes with a receiver's work." In *William C. Holland*, the Bureau granted a receiver a waiver to allow for the timely filing of renewal applications after a licensee party's lack of cooperation prevented the receiver from doing so. The Bureau also granted a waiver to facilitate a one-year period for the stations to be brought into operation, stating that the period "which coincides with the construction and operational requirements for most Part 90 licensees, constitutes a reasonable opportunity to bring the stations back into operation."<sup>29</sup> The Receiver's reliance on the case is misplaced because the

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<sup>27</sup> Intelligent Transportation & Monitoring Wireless LLC; Skybridge Spectrum Foundation; V2G LLC; Requests for Extension of the Five-Year Construction Deadline for 2,132 Part 22 Geographic Area Paging Service Licenses, DA 16-1167 at para. 25.

<sup>28</sup> Skybridge/Telesaurus Request at 3.

<sup>29</sup> William M. Holland, Conditional, Limited Request for Waivers, *Order and Order on Reconsideration*, DA 16-469 at para. 18.



Receiver here seeks a waiver of a construction and operational requirement that has been in place for many years. The Receiver does not, and cannot, claim that Haven's actions have precluded the filing of the Applications or any renewal applications. Indeed it would frustrate the purpose of the construction and operational requirements for the Bureau to grant still another waiver after all this time. WISPA thus urges the Bureau to reject the Receiver's waiver request.

### ***HWA and FCR***

These Applicants make similar claims. HWA requests an extension through October 5, 2021, claiming an inability to construct "because there is no equipment available within the marketplace."<sup>30</sup> HWA cites negotiations with various vendors to obtain LMS radios and dismissed such equipment because it 1) was "used and obsolete" and a "commercially reasonable" deal could not be reached 2) raised a "substantial question as to whether the equipment ... would comply with" FCC rules, 3) was designed to operate with power levels that were unsatisfactory for use in Internet service or 4) could not be converted from reflex paging for use in LMS ranges as locator devices. FCR argues that "very strict requirements on the LMS band ... have led to the non-existence of commercially available equipment" and that "in August of 2016, absolutely nothing has changed for all licensees, with the possible exception of NextNav/Progeny." FCR insists that it "cannot place an order with anyone to buy equipment for LMS use" and that NextNav/Progeny equipment is not ready for commercial deployment and is not for sale to FCR for use on A Block frequencies.<sup>31</sup>

In the 2014 M-LMS Order, the Bureau stated that "M-LMS licensees are cautioned that the Bureau will not consider future requests for waiver or extension of either the interim or end-

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<sup>30</sup> Request for Extension of First Build-Out Date and Request for Waiver of Helen Wong-Armijo at 3. *See also* Request for Extension of Second Build-Out Date and Request for Waiver.

<sup>31</sup> FCR, Inc. Request for Waiver and For Extension of First Build-Out Deadline at 2-5. *See also* FCR, Inc. Request for Waiver and For Extension of Second Build-Out Deadline

of-term construction deadline based on claims related to lack of equipment.”<sup>32</sup> FCR and HWAs Applications request a waiver or extension based on such claims of equipment unavailability, despite the Bureau’s warning that “[e]ven if the equipment market does not develop consistent with M-LMS licensees’ chosen business plans, licensees will nonetheless be subject to” the construction requirements. The Applicants have failed to satisfy these requirements, and the Applications warrant no further consideration by the Bureau.

### **Conclusion**

Enough is enough. The Bureau has an obligation to promote effective spectrum use, not to tolerate warehousing. In the 2014 M-LMS Order, the Bureau sent a strong message to M-LMS Licensees that it would be “contrary to the public interest to grant extension requests in perpetuity where our build-out requirements have not been met.”<sup>33</sup> For the foregoing reasons, WISPA urges the Bureau to dismiss the Applications and to deem the underlying M-LMS licenses expired.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

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<sup>32</sup> 2014 M-LMS Order at 10368.

<sup>33</sup> *Id.*

## CERTIFICATE OF SERVICE

I, Jonathan Allen, of the law firm of Rini O'Neil, P.C., hereby certify that I have caused a copy of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to be sent by e-mail this 30th day of November, 2016 to:

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